

Contract Number *[Contract Number]*

for

[Software License and Associated Services]

Between the

[Agency]

and

[Name of Vendor]

Effective Date: _____

(add date when signed by last party of execution)

SOFTWARE LICENSE CONTRACT

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EXHIBITS

Exhibit A: *[Name of Acquisition]* Request for *[Proposal/Quotation/Quotation and Qualification]*

Exhibit B: Vendor's Proposal for *[Name of Acquisition]*

Note: Exhibits A and B are not attached but are available upon request from the Purchaser Contract Administrator

Table of Contents– To list and identify the provisions contained within the contract. This section, at the beginning of the contract, should contain a categorical list of all the provisions contained in contract with page number references.

[SAMPLE]

SOFTWARE LICENSE CONTRACT

NUMBER [XXX-XXX-XXX]

PARTIES(*required term*)

This Software License Contract (hereinafter referred to as "Contract") is entered into by and between the state of Washington, acting by and through [Agency Name], an agency of Washington State government (hereinafter referred to as "Purchaser" or "[Agency Name]" or "[Department/Commission/Board]") located at P.O. Box 4[xxxx], Olympia, Washington, 98504[xxxx] and [Vendor's Name], a [corporation, sole proprietorship, partnership or other business form] with TIN [FEIN # or SSN in lieu] licensed to conduct business in the state of Washington under UBI number [UBI number] (hereinafter referred to as "Vendor"), located at [list Vendor's address here] for the purpose of licensing [list item(s) to be licensed].

This section identifies the parties entering into the contract. It states the name of the Purchaser, the Vendor's legal corporate name and address, state Uniform Business Identifier number (issued by the Department of Revenue), and the Federal Tax Identification number or Social Security number of the Vendor.

RECITALS

WHEREAS, the state of Washington, acting by and through [Agency Name], issued a Request for [Proposal/Quotation/Quotations and Qualifications] [RFP]/[RFQ]/[RFQQ] dated [Date], (Exhibit A) to license [list item(s) to be licensed] in accordance with its authority under chapter 43.105 RCW; and,

WHEREAS, the [Vendor's Name] submitted a timely proposal to the [Agency Name]'s [RFP/RFQ/RFQQ] (Exhibit B); and,

WHEREAS, the [Agency Name] evaluated all proposals properly submitted in response to the above-referenced [RFP/RFQ/RFQQ] and has identified [Vendor's Name] as the apparently successful Vendor; and,

WHEREAS, the [Agency Name] has determined that entering into a Contract with [Vendor's Name] will meet the needs of the Purchaser and will be in the Purchaser's best interest;

[If not a competitive acquisition, discuss Sole Source or other procurement method in place of the above Recitals.]

NOW THEREFORE, the Purchaser awards to [Vendor's Name] this Software License Contract which shall govern Vendor's furnishing to [Agency Name] the [describe items being licensed] and other Related Services as indicated on the schedule titled, Authorized Product and Price List (attached hereto), in accordance with the terms and conditions of this Contract. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

Recitals – Every contract must provide for contractual considerations. If the contract results from an RFP or RFQ, include a recitation as to the basis for the contract, and where appropriate, included by reference in this section. Any schedules of Software or Services to be acquired together with prices/discounts should be included by reference and attached to the contract.

1. Definition of Terms

[Definition of Terms not included in this list but which are pertinent to the individual contract should be added to this list.]

Definitions as used throughout this Contract shall have the meanings set forth below.

“Acceptance” shall mean a written notice from the Purchaser to the Vendor that the Software has passed its Acceptance Testing.

“Acceptance Date” shall mean the date upon which Purchaser accepts the Software as provided in the section titled Standard of Performance and Acceptance

“Acceptance Testing” shall mean the standards to be met by the Software prior to Acceptance by the Purchaser, as set forth in the section titled Standard of Performance and Acceptance

“Business Days and Hours” shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

“Contract” shall mean this document, all schedules and exhibits, and all amendments hereto.

“Delivery Date” shall mean the date by which the Software ordered hereunder must be delivered *if a specific date is set forth in this Contract, you may insert that date here by adding: “which shall be (fill in specific date)”*.

“[Department/Commission/Board]” shall mean the same as “Purchaser,” the *[Agency Name]*.

“Execution Date” shall mean the date of the last signature of a party to this Contract.

“Exhibit A” shall mean the Request for *[Proposal/Quotation/Quotations and Qualifications]* *[(RFP)/(RFQ)/(RFQQ)]* for *[Describe Acquisition]* issued by the Washington State *[Agency Name]* dated *[Date]*.

“Exhibit B” shall mean the Vendor’s response dated *[Date]*.

“FEIN” shall mean the Vendor’s Federal Employer Identification Number.

“License” shall mean the right to use the Software which is granted by this Contract and governed by its terms and conditions.

“Licensed Software” shall mean Software which is licensed pursuant to this Contract.

“Order Document” shall mean any official Purchaser document and attachments thereto specifying the Software to be purchased from the Vendor under this Contract.

“Purchaser” shall mean the state of Washington, *[Agency Name]*, any division, section, office, unit or other entity of the *[Agency Name]* or any of the officers or other officials lawfully representing the *[Agency Name]*, which has executed this Contract with the Vendor for specified Software and/or Services.

“Purchaser Contract Administrator” shall mean that person designated by the *[Agency Name]* to administer this Contract on behalf of the *[Agency Name]* as further defined in the section titled Purchaser Contract Administrator

“Purchaser Contracting Officer” shall mean the *[the Agency’s Officer with signature authority]* or the person to whom signature authority has been delegated in writing. This term includes, except as otherwise provided in this Contract, an authorized representative of the Contracting Officer acting within the limits of his/her authority.

“**RCW**” shall mean the Revised Code of Washington (Washington State Law).

“**[RFP/RFQ/RFQQ]**” shall mean the Request for~~[Proposal/Quotation/Quotations and Qualifications]~~ used as a solicitation document in this procurement, as well as all amendments and modifications thereto. *[Use this definition only if the procurement was competitively bid.]*

“**Related Services/Services**” shall mean those Services provided under this Contract and related to the Software license being acquired, that are appropriate to the scope of this Contract and includes such things as installation Services, maintenance, training, etc.

“**Software**” shall mean the object code version of computer programs and any related documentation, excluding maintenance diagnostics. Software also means the source code version, where provided by Vendor.

“**Specifications**” shall mean the technical and other specifications set forth in the~~RFP/RFQ/RFQQ~~, Exhibit A, and any additional specifications set forth in Vendor’s Response, Exhibit B, collectively.

“**SSN**” shall mean the Vendor’s Social Security Number if used in lieu of Federal Employer Identification Number as the Vendor’s Federal Tax Identification Number.

“**Subcontractor**” shall mean one not in the employment of the Vendor, who is performing all or part of those Services under this Contract under a separate contract with the Vendor. The term “Subcontractor” means Subcontractor(s) of any tier.

“**TIN**” shall mean the Vendor’s Federal Tax Identification Number which may be either FEIN or SSN.

“**UBI**” shall mean the Vendor’s Uniform Business Identifier issued by the Washington State Department of Revenue.

“**Vendor**” shall mean *[Vendor’s Name]*, its employees and agents. “Vendor” also includes any firm, provider, organization, individual, or other entity performing Services under this Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Contract.

“**Vendor’s Account Manager**” shall mean a representative of the Vendor who is assigned as the primary contact person with whom the~~[Agency Name]~~ Contract Administrator shall work for the duration of this Contract unless replaced, with advance Purchaser approval, by another representative.

Definition of Terms– To establish specific definitions for terms used within the contract
This section, near the front of the contract, should contain a definition of any potentially confusing, ambiguous, vague, unique, etc., terms or any other terms that may be appropriate and useful in the contract.

Contract Term

2. License Grant*(required term)*

- 2.1. Vendor grants to Purchaser a non-exclusive~~site-wide, irrevocable, transferable - use terms as applicable]~~ license to use the Software and related documentation according to the terms and conditions of this Contract.

[Include the following section only if you desire the ability to modify the Software.]

- 2.2. Purchaser may modify any Vendor application Software and may combine such with other programs or materials to form a derivative work, provided that upon discontinuance or termination of the license, the Vendor application Software will be removed from the derivative work and, at the Purchaser’s option, either destroyed or returned to Vendor.

- 2.3. Purchaser will not decompile or disassemble any Software provided under this Contract or modify Software which bears a copyright notice of any third party.
- 2.4. Purchaser may copy each item of Software to a single hard drive~~also multiple hard drives or network, if applicable~~].
- 2.5. Purchaser will make and maintain no more than one archival copy of each item of Software, and each copy will contain all legends and notices and will be subject to the same conditions and restrictions as the original. Purchaser may also make copies of the Software in the course of routine backups of hard drive(s) for the purpose of recovery of hard drive contents.
- 2.6. In the event that Vendor shall, for any reason, cease to conduct business, or cease to support the Software licensed under this Contract, Purchaser shall have a right to convert the Software licenses into perpetual licenses, with rights of quiet enjoyment, but subject to payment obligations not to exceed the then current rates.

Business or Support Termination Rights- To give Purchaser a perpetual license in event of business termination, regardless of term of license

- 2.7. Vendor understands that Purchaser may provide information processing Services to other users that are agencies of state government and other tax supported entities Software delivered hereunder may be used in the delivery of these Services. Vendor acknowledges and agrees that said use of Software products is acceptable under the licensing agreements contained herein.

Freedom of Use -Software – To ensure that users of a computer service center have the right to use the center's Software without interference or additional licenses

- 2.8. Purchaser may move Software from one device to another provided such Software is completely removed from the first device after a reasonable testing period on the new device.

The License Grant is the single most important element in the contract and requires the most original writing. This section documents all elements of the scope and magnitude of the license and reflects the mutual understanding of the parties regarding what is being licensed.

3. Term (required term)

License Term. The License for all Software provided pursuant to this Contract shall be perpetual.

[- OR -]

- 3.1. Initial License Term. The initial license term for Software acquired pursuant to this Contract shall be [_____ (__)]/year(s), commencing upon the Acceptance Date.
- 3.2. Subsequent License Terms. The license term of Software provided pursuant to this Contract may be extended by [_____ (__)]/additional [_____ (__)] terms: PROVIDED, The extensions shall be at the exclusive option of the Purchaser and shall be effected by the Purchaser giving written notice of extension to the Vendor not less than thirty (30) calendar days prior to the expiration date of the then current license term of this Contract. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

[OR replace Subsequent License Term with the following.]

- xx. Subsequent License Terms. The license term of Software provided pursuant to this Contract shall be automatically extended for additional [_____ (__)]/year periods unless terminated by the Purchaser by giving written notice of its decision not to renew to the Vendor not less than thirty (30) calendar days prior to the expiration date of the then current license term of this

Contract. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

(If Software license includes maintenance and support, add a section regarding the term of the maintenance agreement. An example is shown below.)

3.3. Maintenance and Support of Software.

[Maintenance, including starting date, needs to be negotiated. Often a warranty is contingent on the acquisition of maintenance.]

- 3.3.1. Initial Term. The initial term for maintenance and support Services for Software licensed herein shall be [_____] (___)/year, commencing one (1) day following expiration of Vendor's warranty for the Software.
- 3.3.2. Subsequent Terms. The term of said maintenance and support Services may be extended by [_____] (___)/additional [_____] (___)/year periods: PROVIDED, Each extension shall be at the option of the Purchaser and shall be effected by the Purchaser giving written notice of the extension to the Vendor not less than thirty (30) calendar days prior to the expiration of the then current Contract term and Vendor accepting such extension prior to the expiration of the then current Contract term. Each maintenance term shall be governed by the terms and conditions established herein. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

[- OR replace Subsequent Terms section with the following section.]

- xx. Subsequent Terms. The term of said maintenance and support Services shall be automatically extended for additional [_____] (___)/year periods unless terminated by the Purchaser by giving written notice of its decision not to renew to the Vendor not less than thirty (30) calendar days prior to the expiration of the then current Contract term. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

[- OR replace Subsequent Terms section with the following section.]

- xx. Subsequent Terms. The term of said maintenance and support Services shall be automatically extended for [_____] (___)[number of additional one year terms allowed] additional [_____] (___)/year periods unless terminated by the Purchaser by giving written notice of its decision not to renew to the Vendor not less than thirty (30) calendar days prior to the expiration of the then current Contract term. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

(If the license agreement also includes the purchase of Software licenses at a given price for a certain period of time, add a section regarding the term of the ability to purchase. An example is shown below.)

3.4. Term of Contract for Purchases

[If this is a single purchase contract, use the following section only; otherwise, use Initial Term, Subsequent Terms, and Maintenance as applicable.]

- 3.4.1. Initial Term. The initial term for purchases under this Contract shall be [_____] (___)/years, commencing upon the date of its execution by both the parties. The Execution Date of this Contract shall be the date of the last signature hereto.
- 3.4.2. Subsequent Terms. The term of this Contract may be extended by [_____] (___)/additional [_____] (___)/year periods: PROVIDED, The extensions shall be at the option of the Purchaser and shall be made effective by the Purchaser giving written notice of its intent to extend this Contract to the Vendor not less than thirty (30)

calendar days prior to the expiration of the then current Contract term and Vendor accepting such extension prior to the expiration of the then current Contract term. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

[-OR- replace Subsequent Terms with the following.]

- xx. Subsequent Terms. The term of this Contract shall be automatically extended by [_____] (___) additional [_____] (___) year periods unless terminated by the Purchaser by giving written notice of its decision not to renew to the Vendor not less than thirty (30) calendar days prior to the expiration of the then current Contract term. No change in terms and conditions shall be permitted during these extensions unless specifically set forth in this Contract.

The contract should specify a start date and a completion date, and conditions for extensions and termination

Contracts may cross biennial and fiscal year lines, but the contract should specify that any service performed beyond the end of the fiscal year or biennium is authorized contingent upon receipt of funding. No service is to be provided until funding is authorized.

4. Survivorship

All transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Disputes, Limitation of Liability, Patent and Copyright Indemnification and Protection of Purchaser's Confidential Information shall survive the termination of this Contract.

The contract should address the survivability of certain clauses

Pricing, Invoice and Payment

Contract payment types can be broadly divided into two categories: fixed-price and cost-reimbursable. Under a fixed price or lump sum contract, the Vendor is obligated to perform within the specified contract amount or exceed it at the Vendor's expense. The Vendor has full risk for profit or loss as governed by the costs. Under a cost-reimbursable contract when the scope of service may not be as clearly defined, the Vendor agrees to apply his/her best efforts to perform within the contract amount. The Vendor is reimbursed for incurred costs in increments or upon completion.

The primary considerations for determining the type of remuneration to use are technical and cost uncertainty. Technical uncertainty is the primary determinant. Limited uncertainty would indicate the use of a fixed-price contract, while high uncertainty indicates a cost-reimbursable contract.

Fixed Price (Lump Sum) Contract

The firm fixed price contract is preferred for most state contracting. The Purchaser's expenditures can be predicted, administration is minimal, and any financial risks are those of the Vendor. A fixed price contract has a firm maximum dollar figure. The Vendor accepts full responsibility for costs over and under the fixed price (lump sum) amount. The Purchaser's project manager should determine if the fixed price is reasonable

under the circumstances of the particular project. Where future costs are uncertain, two variations may be considered:

Fixed Price with Economic Price Adjustments – Subject to economic indicators or occurrences specified in the RFP, the contract provides for price adjustments that allow for upward or downward revision of price.

Government indices or other factors in the price adjustment formula should reflect conditions industry wide, and the burden of proof for a price increase rests with the Vendor. The contract must call for sufficient lead time on price increases to permit necessary adjustments by the program affected. The Vendor bears all risks, except for the identified areas of price adjustment, and retains the incentive to manage the work and costs effectively. In practice, the Vendor may find that it is possible to absorb some cost increases to the benefit of the Purchaser.

Time and Materials Contract

Under time and materials contracts, the state pays a fixed hourly rate and for the costs of certain specified materials. The nature of these contracts may discourage efficiencies on the part of the Vendor. Therefore, these contracts should have a ceiling amount which the Vendor may exceed at his/her own risk. This type of remuneration may be used if the Purchaser is unable to specify the tasks that will be performed. A time and materials contract places most of the risk on the Purchaser and none on the Vendor. Frequent contract monitoring is required to ensure that the number of labor hours is kept to a reasonable level.

Cost-Reimbursable Contract

This is a contract in which the Vendor is reimbursed for its costs rather than payment based solely on the amount and quantity of service rendered. Cost reimbursable contracts almost always include a budget with a line item for each type of cost. When entering into a cost-reimbursable contract, agencies must make a clear determination of allowable costs. This type of contract is used when Vendor compensation cannot be based on performance or deliverables. In such cases, the Purchaser makes as reasonable an estimate of cost as possible. Cost-type contracts generally have a limited application in contracting for services. Implicit in this type of contract is the complete disclosure of costs by the Vendor and the Purchaser Project Manager's ability to monitor the costs.

Two variations of cost-reimbursable contracts are:

Cost Plus Fixed Fee – This is the most frequently used form of a cost reimbursement contract. In this type of transaction, the Purchaser and Vendor agree on the total estimated cost of the project and the allowable fee or profit to be earned by the Vendor. Allowable costs are agreed upon prior to contract award to prevent ambiguity. If actual costs are lower than estimated, the Vendor will earn a higher percentage fee of costs. If the costs are higher than estimated, the Vendor does not earn any fee.

Cost Plus Incentive Fee – Incentive contracting requires identifying significant, measurable factors on which to place the incentives. Cost is always a reasonable factor. Rather than a fixed fee, this contract form has a minimum fee and a maximum fee. An under-run earns a reward and an overrun is not rewarded. The Vendor is rewarded for timeliness, but not for untimeliness. Selecting these events and establishing an acceptable incentive formula represent major negotiating tasks.

Cost-reimbursable contracts are difficult to monitor and require increased contract administration to verify expenditures. In addition, some federally-funded cost

reimbursement contracts are subject to special audit requirements under the Single Audit Act described in Office of Management and Budget Circular No. 133.

The contract should state whether the Purchaser will pay expenses incurred by the Vendor and, if so, which ones. Such expenses may include airfare (economy or coach class), lodging and subsistence necessary during periods of required travel, expenses incurred during travel for telephone, copying and postage, and private vehicle mileage. If other types of expenses are to be allowed, they must be clearly defined. Travel expenses are generally reimbursed at the current state travel reimbursement rates.

The contract should state the maximum dollar amount allowed for expenses.

5. Pricing *(required term)*

- 5.1. License Fee - The Purchaser shall pay to the Vendor the sum of \$_____ for the license.

[- OR -]

- 5.1 The Vendor agrees to provide the Software and Related Services at the costs, rates, and fees set forth in the Authorized Product and Price List attached as Schedule A to this Contract. No other costs, rates, or fees shall be payable to the Vendor.

[Use the following two sections only if maintenance is being purchased.]

- 5.2. Maintenance and Support Fees - Upon expiration of the Vendor-provided warranty as set forth in the section titled Vendor Commitments, Warranties and Representation and upon election by the Purchaser to receive maintenance and support Services from the Vendor, the Purchaser shall pay maintenance and support fees to the Vendor ~~calculated at [_____] percent [(____)]% of the Vendor's then current license fee for the Software product OR \$__ or other reasonable amount/method~~. PROVIDED THAT, Maintenance and support fee increases shall be capped at [_____] percent [(____)]% annually from one year to the next and may only be increased on the anniversary of the Execution Date of this Contract.

Purchaser shall pay maintenance and support charges on a monthly basis, in arrears *[Change preceding sentence if payment is one quarter in advance.]* Payment of maintenance Service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance and support charges for each calendar day.

- 5.3. Training Fees - *[insert cost here]*
- 5.4. Installation Fees - *[insert cost here]*
- 5.5. Upgrade Fees - *[insert cost here]*

[- OR - sections above can be replaced with the following one section if all fees are going to be placed in an attached Schedule.]

- 5.6. The Vendor agrees to provide the Software, Maintenance and other Services at the costs, rates, and fees set forth in Schedule A to this Contract. No other costs, rates, or fees shall be payable to the Vendor for implementation of Vendor's proposal/quotation.
- 5.7. If the Vendor reduces its list prices for any of the Software or Related Services during the term of this Contract, the Purchaser shall have the immediate benefit of such lower prices and rates for new purchases.
Vendor shall send notice to the Purchaser Contract Administrator with the reduced list prices

within fifteen (15) Business Days of the reduction taking effect. ~~OR -~~ Vendor shall send updated price lists to the Purchaser ~~[quarterly/semi-annually]~~

- 5.8. At least one hundred-twenty (120) days before the end of the then current term of this Contract, license term, or term of maintenance and support, the Vendor may propose license fees and maintenance and support (Service) rate increases by written notice to the Purchaser Contract Administrator. Price adjustments will be taken into consideration by the Purchaser Contract Administrator when determining whether to extend this Contract.

To establish conditions for price increases, reductions, escalation, and notices thereof

[Price Protection section following is only advisable when federal funds involved or in special circumstances.]

- 5.9. The Vendor agrees all the prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by the Vendor to any other governmental entity purchasing the same quantity under similar terms. If the Vendor shall, during the term of this Contract, enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, the Vendor shall be obligated to provide the same to the Purchaser for subsequent purchases.

Price Protection - To guarantee state agencies the vendors most favored customer prices

6. Advance Payment Prohibited *(required term)*

No advance payment shall be made for the Software and Related Services furnished by Vendor pursuant to this Contract. *[If there is maintenance, but it is not being paid in arrears as set forth in Pricing and Price Protection above, insert the following: "Notwithstanding the above, maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter."]*

Advance Payments Prohibited – All payments must be made after the delivery of products or services. Agencies cannot issue payment for services prior to the performance of work. Agencies must not pay for any products or services prior to receipt thereof, per the Washington State Constitution, Article VIII, Section 5, "Credit Not to be Loaned."

7. Taxes

The Purchaser will pay sales and use taxes imposed on the Software or Related Services acquired hereunder. The Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, taxes based on the Vendor's income, or personal property taxes levied or assessed on the Vendor's personal property to which the Purchaser does not hold title. Purchaser, as an agency of the Washington State government, is exempt from property tax *[If Purchaser is not a state agency, then it is responsible for payment of personal property tax for the Software, so delete the last line of this section.]*

Taxes – To identify tax liability and exemptions for the contract

8. Invoice and Payment *(required term)*

[If this is a simple contract for \$10,000 or less, only the following paragraph need be included.]

Invoices for work performed shall be submitted, in writing to the Purchaser Contract Administrator, in a format designated by the Purchaser Contract Administrator. In addition to agreed-upon charges, invoices shall include such information as is necessary for Purchaser to determine the exact nature of all expenditures and shall reference this Contract number [XXX-XXX-XXX]. Additional payment terms or invoice instructions may be agreed upon by the Purchaser and the Vendor.

[If this is a complex contract or is for more than \$10,000 use the following paragraphs.]

- 8.1. The Vendor will submit properly itemized invoices and/or vouchers to the Purchaser. Invoices shall provide and itemize, as applicable:
- a) Contract number/[XXX-XXX-XXX];
 - b) Description of Software, including quantity ordered;
 - c) Date of delivery and/or date of installation;
 - d) Vendor's list price for each item;
 - e) Applicable discounts;
 - f) Monthly maintenance charges;
 - g) Net invoice price for each item;
 - h) Applicable taxes;
 - i) Shipping costs;
 - j) Other applicable charges;
 - k) Total invoice price; and
 - l) Payment terms including any available prompt payment discounts.
- 8.2. Such payments shall be due and payable within thirty (30) calendar days after receipt and Acceptance of such Software or Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 8.3. Incorrect or incomplete invoices will be returned by the Purchaser to the Vendor for correction and reissue.
- 8.4. This Contract number/[XXX-XXX-XXX] must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract. The Purchaser shall not honor drafts, nor Accept goods on a sight draft basis.
- 8.5. If the Purchaser fails to make timely payment, Vendor may invoice the Purchaser one percent (1%) per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is postmarked within thirty (30) calendar days of Acceptance of the Software or receipt of Vendor's properly prepared invoice, whichever is later.

It is helpful to include invoicing instructions in the contract. The Purchaser may require use of State Form A-19, Invoice Voucher, for submittal of requests for payment and may state how often invoices should be submitted. Invoices in whatever form submitted must contain sufficient detail and back-up documentation to determine the appropriateness of the charges.

Payment and Invoice Provisions- To establish provisions for the timing of payments and establish conditions for delinquency and penalties

9. Overpayments to Vendor

Upon notice thereof, Vendor shall promptly refund to Purchaser the full amount of any erroneous payment or overpayment to which Vendor is not entitled pursuant to this Contract.

Vendor Responsibilities

10. Software Ownership(required term)

[Use this section when Purchaser is acquiring license, but not ownership.]

Vendor shall maintain all title, copyright, and other proprietary rights in the Software. Purchaser does not acquire any rights, express or implied, in the Software, other than those specified in this Contract.

Vendor, as Licensor, hereby warrants and represents to Purchaser as licensee that Vendor is the owner of the Software licensed hereunder or otherwise has the right to grant to Purchaser the licensed rights to the Software provided by Vendor through this Contract without violating any rights of any third party, and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by Vendor.

Software Ownership – To warrant that Vendor is the owner of Software and/or has unrestricted right to license it to Purchaser.

[Use following sections when Purchaser is acquiring ownership.]

Unless otherwise provided, data which originates from this Contract shall be “works for hire” as defined by the U.S. Copyright Act of 1976 and shall be owned by the Purchaser. Data shall include, but not be limited to, Software, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

Data which is delivered under this Contract, but which does not originate therefrom, shall be transferred to the Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so: PROVIDED, That such license shall be limited to the extent which the Vendor has a right to grant such a license. The Vendor shall exert all reasonable effort to advise the Purchaser, at the time of delivery of data furnished under this Contract, of all known or potential infringements of privacy or other intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. The Purchaser shall receive prompt written notice of each notice or claim of copyright infringement received by the Vendor with respect to any data delivered under this Contract. The Purchaser shall have the right to modify or remove any restrictive markings placed upon the data by the Vendor.

Vendor shall not use or in any manner disseminate such work product or computer program to any third party without the prior written permission of the Purchaser. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or duplicate any computer programs or work products or any portion thereof, in any form, or make any disclosure with reference thereto to any third party.

Rights in Data – Data originating from the contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the Purchaser.

11. Source Code Escrow

[Use this section when Purchaser is acquiring license, but not ownership AND when there is a valid concern that the state's business operations would not be able to continue were the Software product no longer supported, marketed, or allowed to be used.]

- 11.1. Source Code Escrow Package Definition. The term “Source Code Escrow Package” shall mean the following:
- (a) A complete copy in machine-readable form of the source code and executable code of the Licensed Software;
 - (b) A complete copy of any existing design documentation and user documentation; and/or
 - (c) Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

- 11.2. Delivery of Source Code into Escrow. Vendor shall deliver a Source Code Escrow Package to the Escrow Agent, provided that Vendor, Purchaser and Escrow Agent shall first enter into a supplementary escrow agreement attached hereto as Schedule B title Escrow Contract. Vendor and Purchaser shall use their best efforts to enter into such an Escrow Contract as soon as possible after the date of this Contract, but not later than *thirty (30) days or other reasonable time, including consideration of whether the Escrow Contract should be entered into at the same time as this contract*.
- 11.3. Delivery of New Source Code into Escrow. When and if, from time-to-time during the term of this Contract, term of license or term of maintenance and support Services, Vendor provides Purchaser with a maintenance release or upgrade version of the Licensed Software, Vendor shall within ten (10) Business Days thereafter deposit with the Escrow Agent, in accordance with the Escrow Contract, a Source Code Escrow Package for the maintenance release or upgrade version, and give Purchaser notice of such delivery.
- 11.4. Verification of Source Code Escrow Package. Purchaser, at its option and expense, may request that the completeness and accuracy of any Source Code Escrow Package be verified.
- 11.4.1. Such verification may be requested once per Source Code Escrow Package.
- 11.4.2. Such verification will be conducted by the Escrow Agent or, upon at least ten (10) Business Days prior notice to Vendor, by another party (the "Verifier") reasonably acceptable to Vendor (after full disclosure to Vendor of information reasonably requested by Vendor about the Verifier).
- 11.4.3. Prior to conducting the verification, the Verifier shall first execute a form of confidentiality agreement prepared by Vendor and precluding the Verifier from disclosing any information about the source Code Escrow Package to Purchaser other than whether the Source Code Escrow Package was found to be complete and accurate.
- 11.4.4. Unless otherwise agreed at the time by Vendor and Purchaser, verification will be performed on-site at Vendor's premises, utilizing Vendor's equipment and software, at a time reasonably acceptable to Vendor. Vendor shall make technical and support personnel available as reasonably necessary for the verification.
- 11.4.5. Vendor may at its discretion designate a representative to accompany the Source Code Escrow Package at all times, and to be present at the verification. The Verifier will be Purchaser's sole representative at the verification.
- 11.4.6. The responsibility for the completeness and accuracy of the verification will be solely that of the Verifier. Neither the Escrow Agent, if different from Verifier, nor Vendor shall have any responsibility or liability to Purchaser for any incompleteness or inaccuracy of any verification.
- 11.5. Escrow Fees. All fees and expenses charged by the Escrow Agent will be borne by Vendor.
- 11.6. Release Events for Source Code Escrow Package. The Source Code Escrow Package may be released from escrow to Purchaser, temporarily or permanently, solely upon the occurrence of one or more of the following "Escrow Release Events" defined below:
- 11.6.1. The Vendor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign;
- 11.6.2. the Vendor has wound up or liquidated its business voluntarily or otherwise and the State has compelling reasons to believe that such events will cause the Vendor to fail to meet its warranties and maintenance obligations in the foreseeable future; or

- 11.6.3. The Vendor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its warranties and maintenance obligations.
- 11.7. Release Event Procedures. If Purchaser desires to obtain the Source Code Escrow Package from the Escrow Agent upon the occurrence of an Escrow Release Event, then:
- 11.7.1. Purchaser shall comply with the procedures set forth in the Escrow Contract to document the occurrence of the Release Event;
- 11.7.2. Purchaser shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with the section in this Contract titled, Vendor's Proprietary Information
- 11.7.3. If the release is a temporary one, then Purchaser shall promptly return all released materials to Vendor when the circumstances leading to the release are no longer in effect; and
- 11.7.4. Purchaser shall promptly respond, fully and completely, to any and all requests for information from Vendor concerning Purchaser's use or contemplated use of the Source Code Escrow Package.

Escrow of Source– Protects users' right to continuity of use and access to source code for Software. Clause is not intended for routine coverage of all Software, rather for mission critical Software, where Vendor's business cessation would gravely impact Purchaser systems performance. Should be accompanied by an attached escrow agreement with Vendor, third party and Purchaser signatures. May also be used to provide Purchaser with source code to Software when Vendor warranty or Vendor maintenance expires

12. Software Delivery

- 12.1. The Vendor shall deliver the Software ordered pursuant to this Contract on or before ~~specified in the Purchase Order or Field Order or name the date~~ For any exception to this Delivery Date, the Vendor must notify the Purchaser and obtain prior approval in writing. Time is of the essence with respect to delivery and the Vendor may be subject to liquidated damages and/or termination of this Contract and/or other damages available under law for failure to deliver on time.
- 12.2. All Software deliveries made pursuant to this Contract must be complete. Unless the Vendor has obtained prior written approval from Purchaser, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be Accepted. All packages must be accompanied by a packing slip which identifies all items included with the shipment and the Purchaser's Purchase order number. The Vendor's delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder.
- 12.3. *[Provide any other delivery instructions, e.g. no deliveries after 3:00 p.m., or must prearrange deliveries with specified person, etc.]*

Installation and Delivery Dates– To establish the terms, dates, and conditions for delivery and installation

13. Risk of Loss and Shipping

The Vendor shall ship all Software purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the goods and hazards of transportation. Regardless of FOB point, Vendor agrees to bear all risks of loss, damage, or destruction of

the Software ordered hereunder which occurs prior to ~~delivery or Acceptance, whichever is applicable~~ except loss or damage attributable to the Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Vendor from any obligation hereunder. After ~~delivery or Acceptance, whichever is applicable~~ the risk of loss or damage shall be borne by the Purchaser, except loss or damage attributable to the Vendor's fault or negligence.

Risk of Loss– To relieve the Vendor for risks of loss or damage after installation of the Software.

Transportation– To establish responsibility for cost of transportation, transit insurance, risk of loss, and title during shipment to the installation site

14. Installation of Software by Vendor

[If the Vendor is going to install the Licensed Software, the following section can be used.]

Vendor shall install the Licensed Software on Purchaser's designated computer system in accordance with the *[(applicable industry standards) or (specification in Schedule D) or (set forth the requirements in this section)]*.

[- OR -]

xx. Installation of Software by Purchaser

[If the Purchaser is going to install the Licensed Software, the following section can be used.]

All installation of the Licensed Software purchased pursuant to this Contract for use by Purchaser will be by, and at the sole expense of Purchaser.

15. Software Specifications

[Use only if applicable schedule is developed - or modify to conform to defined term "Specifications."]

Software Specifications are listed and described on Schedule ~~D~~ *complete an attachment for Specifications OR attach Vendor provided specifications* attached hereto and by this reference made a part hereof, as though completely set forth herein. Vendor warrants that products delivered hereunder shall perform in accordance with these specifications.

Specifications– To provide for including technical specifications by reference and attached to the contract

16. Standard of Performance and Acceptance

[This provision need only be used when Software to be purchased is required to perform a critical business function of the Purchaser or when leading edge technology is being procured. For standard products whose performance has already been proven, the cost increase of requiring such a provision may not be worth the benefits.]

- 16.1. During Performance Testing, as defined in this section, Purchaser shall conduct tests as it deems appropriate concerning whether the Licensed Software appears to be capable of being effectively utilized in Purchaser's operating environment.
- 16.2. The Performance Testing shall commence *[_____ (__) Business Days after [delivery or installation] of the Licensed Software by Vendor.*
- 16.3. Subject to possible extensions as indicated below, the Performance Testing shall ~~end~~ *state length of time you have for testing, e.g. 30 calendar days].*

- 16.4. The Performance Testing may be extended in accordance with the following procedures:
- 16.4.1. If Purchaser determines, at its sole discretion at any time prior to the end of the Performance Testing period, that the Licensed Software appears to be deficient or unsuitable for Purchaser's use for any reason, then Purchaser may, at its discretion, promptly notify Vendor, specifying in the notice the respects in which the Licensed Software is deemed to be deficient or unsuitable.
- 16.4.2. If Purchaser gives such notice to Vendor during the period beginning five (5) Business Days prior to the expiration of the Performance Testing period, then the expiration of the Performance Testing will be postponed for five (5) Business Days to permit Vendor to evaluate the reported deficiency or unsuitability, unless otherwise specified in Purchaser's notice.
- 16.5. If the parties agree to extend the Performance Testing to permit Vendor to correct deficiencies, then the Performance Testing period will be extended by the less of (a) the amount of time actually taken by Vendor to deliver a corrected version, or (b) any maximum amount of time agreed to by Vendor and Purchaser.
- 16.6. Purchaser may (a) Accept the Licensed Software subject to the terms and conditions of this Contract or (b) At its sole discretion, reject the Licensed Software; *should only be "sole discretion" for acquisition of software for testing, otherwise change clause to "Reject the Software if it fails to conform to the specifications in the Contract/RFx/etc."* In either case by notice to Vendor at any time during the Performance Testing period. The date, if any, on which Purchaser Accepts the Licensed Software is referred to as the "Acceptance Date."
- 16.7. The Warranty and Maintenance periods shall begin on the Acceptance Date.

Warranties – To establish specific Vendor warranties for performance of Software and define remedies in the event of failure of warranted products

Standard of Performance and Acceptance– To establish provisions for a standard of performance which must be met before any Software is Accepted by the State.

17. Software Upgrades and Enhancements

[Software upgrades and enhancements can outline several areas of Vendor responsibilities. Add to/delete from the following list after negotiation for the specific contract if purchasing this coverage, otherwise delete section. Each of these items may be negotiated independently, depending upon the circumstances, with regard to each party's responsibilities, costs, etc. Refer to sections titled Software Documentation, Software Upgrades and Enhancements and Software Maintenance and Support Service for additional information regarding Software.]

Vendor shall be required:

- 17.1. To supply at no added cost updated versions of the Software to operate on upgraded versions of operating systems;
- 17.2. To supply updated versions of the Software which encompass improvements, extensions, or other changes which Vendor, at its discretion, deems to be logical improvements or extensions of the original products supplied to the Purchaser; and
- 17.3. To supply interface modules which are developed by the Vendor for interfacing the Software to other Software products.

Software, Upgrade, and Enhancement– To establish conditions for upgrade, downgrade, trade-ins, etc., for exchange of Software. { * Some Vendors will provide conditions by which the Purchaser may exchange the unit of Software being acquired in conjunction with a

future upgrade or new release. If a Purchaser determines that such a clause may be important it is usually the responsibility of the Vendor to provide such terms and conditions. Specific requirements should be included in the solicitation document and be reflected in this clause. (Software maintenance, upgrade and enhancement can outline several areas of Vendor responsibilities. These may require the Vendor:

To supply at no added cost updated versions of the Software to operate under new releases of the manufacturer's operating system.

To supply updated versions of the Software which encompass improvements, extensions, or other changes which Vendor, at its discretion, deems to be logical improvements or extensions of the original products supplied to the Purchaser.

To supply interface modules which are developed by the Vendor for interfacing the Software to other Software products.

Each of these items may be negotiated independently, depending upon the circumstances, with regard to each party's responsibilities, costs, etc

18. Software Maintenance and Support Services

[This section should be specifically negotiated with the Vendor. This support often comes with the acquisition of a separately stated maintenance package. Some Vendors provide standard maintenance programs that will meet a Purchaser's needs while others will not. Requirements and penalties should be consistent with the business need of the Purchaser and the specific Software.]

Vendor shall provide a replacement copy or correction service at no additional cost to the Purchaser for any error, malfunction, or defect, if any, in the Vendor-supplied Software which, when used as delivered, fails to perform in accordance with Vendor's officially announced technical specifications or Vendor's proposal and which the Purchaser shall bring to Vendor's attention. Vendor shall undertake such correction service as set forth below and shall use its best efforts to make corrections in a manner which is mutually beneficial. Vendor shall disclose all known defects and their detours or workarounds to the Purchaser.

In addition, Vendor shall provide the following Services:

- 18.1. Telephone Support. Vendor will provide telephone support, toll-free in the United States, to Purchaser during Business Days and Hours. Vendor's telephone service shall include but is not limited to the following Services:
 - 18.1.1. Assistance related to questions on the use of the subject Software;
 - 18.1.2. Assistance in identifying and determining the causes of suspected errors or malfunctions in Software;
 - 18.1.3. Advice on detours or workarounds for identified errors or malfunctions, where reasonably available;
 - 18.1.4. Information on errors previously identified by Purchaser and reported to Vendor and detours to these where available; and
 - 18.1.5. Advice on the completion and authorization for submission of the required form(s) reporting identified problems in the Software to Vendor.
- 18.2. On-line Support. Vendor may execute on-line diagnostics from a remote Vendor location to assist in the identification and isolation of suspected Software errors or malfunctions.

[For the Error and Malfunction Service, the Purchaser should build escalation procedures with different response times and requirements depending upon the severity class of specific types of problems.]

- 18.3. Error and Malfunction Service. Within two (2) Business Days of receiving oral or written notification by the Purchaser of identified errors or malfunctions in the Software, Vendor will either:
- 18.3.1. Provide Purchaser with detour or code correction to the Software error or malfunctions. Each detour or code correction will be made available in the form of either a written correction notice or machine-readable media and will be accompanied by a level of documentation adequate to inform Purchaser of the problem resolved and any significant operational differences resulting from the correction which is known by Vendor, or
 - 18.3.2. Provide Purchaser with a written response describing Vendor's then existing diagnosis of the error or malfunction and generally outlining Vendor's then existing plan and timetable, subject to Purchaser's approval, for correcting or working around the error or malfunction.

Vendor Correction of Software Malfunction – To establish that the Vendor will provide correction to Vendor-supplied Software.

- 18.4. Maintenance Release Services. Vendor will provide error corrections and maintenance releases to the Software which have been developed by Vendor. Such releases shall be licensed to Purchaser pursuant to the terms and conditions of this Contract. Each maintenance release will consist of a set of programs and files made available in the form of machine-readable media and will be accompanied by a level of documentation adequate to inform Purchaser of the problems resolved including any significant differences resulting from the release which are known by Vendor. Vendor agrees that each maintenance release of Software will be compatible with the then current unaltered release of Software applicable to the computer system.
- 18.5. On-Call Support. If a problem occurs which significantly impacts Purchaser's usage of the Licensed Software and remains unidentified or unresolved either by detour or permanent correction after Purchaser has taken the Vendor-prescribed action, Vendor will dispatch a representative to the system location during Business Days and Hours, which representative must arrive within [_____] () Business Hours. Vendor will provide or make available:
- 18.5.1. Advice and assistance in diagnosis and identification of errors or malfunctions in the Licensed Software.
 - 18.5.2. On-site consultation on correction or detour of identified errors or malfunctions.
 - 18.5.3. Advice and assistance on completion of form to report errors or malfunctions to Vendor as specified in the reporting procedure.
- 18.6. When Vendor performs Services pursuant to this Contract which require the use of the Purchaser's computer system(s), the Purchaser agrees to make it available at reasonable times and in reasonable time increments, and in no event will the Purchaser charge the Vendor for such system use.

19. Reauthorization Code Required

[Use if applicable to particular Software.]

If a reauthorization code must be keyed in by Vendor for the Licensed Software to remain functional upon movement to another computer system, Vendor shall provide the reauthorization code to Purchaser within one (1) Business Day after receipt of Purchaser's notice of its machine upgrade or movement.

[- OR -]

A reauthorization code must be keyed in by Vendor for the Licensed Software to remain functional upon movement to another computer system. Vendor shall provide the reauthorization code to Purchaser:

- 19.1. In connection with a machine upgrade or other movement for which Purchaser pays Vendor a machine upgrade fee as set forth in Schedule A, immediately upon receipt of such fee; or
- 19.2. If Purchaser need not pay a fee or other charge in connection with the machine upgrade or other movement, within one (1) Business Day after receipt of Purchaser's notice of its machine upgrade or movement.

20. Software Documentation

[These requirements must first be set forth in the RFX; business needs of the Purchaser will determine whether the manuals must be provided at no additional cost or at a specified cost.]

- 20.1. Vendor will provide Software documentation at the earlier of installation of this Software or within thirty (30) calendar days after execution of this Contract or as otherwise mutually agreed, in the form of the same number of manuals as licensed users of the Software or another mutually agreed number of manuals, adequate for use of Software ordered under the sections of this Contract. Manual upgrades will be provided on a no-charge basis through the Vendor's local sales and service office.
- 20.2. For all Vendor Software furnished to the Purchaser within the scope of this Contract, the Vendor agrees that in the event it withdraws its support, if any, from such Software, it will immediately furnish to the Purchaser, if requested, at no additional cost, sufficient documentation to permit the Purchaser to maintain, modify or enhance such purchased or Licensed Software.
- 20.3. Vendor grants to the Purchaser the right to copy or otherwise reproduce manuals and documentation furnished pursuant to this section, for use within the scope of this Contract at no additional charge.

Software Documentation– To establish that the Vendor will provide appropriate Software documentation

21. Installation (Site) Security

While on the Purchaser's premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations communicated to Vendor.

Installation (Site) Security– To assure Vendor conformance to State premise security regulations

22. Use of Purchaser's Property and Facilities

- 22.1. Any property of the Purchaser furnished to the Vendor shall be used only for the performance of this Contract.
- 22.2. The Vendor shall be responsible for any loss or damage to property of the Purchaser which results from willful misconduct or negligence on the part of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices to ensure that the property will be returned to the Purchaser in like condition to that in which it was furnished to the Vendor. Upon the happening of loss, or destruction of, or damage to any Purchaser property, the Vendor shall notify the Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 22.3. The Vendor shall surrender to the Purchaser all property belonging to the Purchaser upon completion, termination, or cancellation of this Contract. All reference to the Vendor under this section shall include any of its employees, agents, or Subcontractors.

23. Vendor Commitments, Warranties, and Representations

- 23.1. Any written commitment by the Vendor within the scope of this Contract shall be binding upon the Vendor. Failure of the Vendor to fulfill such a commitment may constitute breach and shall render the Vendor liable for liquidated or other damages due the Purchaser under the terms of this Contract.
- 23.2. For purposes of this Contract, a commitment by the Vendor, which must be in writing, includes:
- 23.2.1. Prices, discounts, and options committed to remain in force over a specified period of time;
 - 23.2.2. Any warranty or representation made by the Vendor in a proposal as to Software performance or any other physical, design or functional characteristics of a machine, Software package, system, training, Services, or other products within the scope of this Contract;
 - 23.2.3. Any warranty or representation made by the Vendor concerning the characteristics or items above, contained in any literature, descriptions, drawings or specifications accompanying or referred to in a proposal;
 - 23.2.4. Any modification of or affirmation or representation as to the above which is made by Vendor in writing during the course of negotiation whether or not incorporated into a formal amendment to the proposal in question; and
 - 23.2.5. Any representation by the Vendor in a proposal, supporting documents or negotiations subsequent thereto as to training to be provided, Services to be performed, prices and options committed to remain in force over a fixed period of time or any other similar matter regardless of the fact that the duration of such commitment may exceed the duration of this Contract.

Vendor Commitments, Warranties and Representations To assure that written commitments by the Vendor within the scope of the contract shall be binding upon the Vendor. It is recommended that specific listing of incorporated documents be included, as well.

24. Year 2000 Compliance Warranty~~(required term)~~

Vendor warrants that the Software provided pursuant to this Contract is Year 2000 compliant. This warranty includes a representation that dates on and after the year 2000 do not cause computational problems nor do these dates diminish the functionality of the Software including, but not limited to, date data century recognition, calculations that accommodate same century and multi-century formulas and date values, year 2000 leap year calculations, and date data interface values that reflect the century. Failure to comply with Year 2000 requirements shall entitle Purchaser to a refund ~~of~~ *three (3) times the initial license fee as liquidated damages* OR *(the initial license fee, prorated over the useful life of the Software, defined by the parties as _____ (___) years)*. Vendor has no liability for any failure to comply with this provision that is caused solely by failure of an interconnected third-party product to be Year 2000 compliant.

Hardware, firmware, and software must be Year 2000 Compliant by different dates depending upon the specific application involved. If the goods being procured under the contract involve calculations of future dates (e.g., give entitlement to client for five (5) years from date) it is necessary that all products involved in processing be Year 2000 compliant immediately. However, if there are no date calculations involved, the agency may wish to include a statement in this section which states that the products must be compliant by a specified date certain in the future.

25. Physical Media Warranty

- 25.1. Vendor warrants to Purchaser that each licensed copy of the Licensed Software provided by Vendor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty"). The Physical Media Warranty does not apply to defects discovered more than *[thirty (30), ninety (90) or other reasonable time frame]* calendar days after the date of Acceptance of the Software copy by the Purchaser.
- 25.2. The Physical Media Warranty does not apply to defects arising from acts of non-Vendor employees, agents, or Subcontractors after the media has left Vendor's control in cases of theft, vandalism, fire, water, acts of God or other perils beyond the control of Vendor.
- 25.3. Purchaser shall be entitled to replacement by Vendor, at Vendor's expense including shipping and handling costs, of any Software copy provided by Vendor that does not comply with this warranty.

26. No Surreptitious Code Warranty

[This warranty may be included if a standard warranty package is purchased.]

- 26.1. Vendor warrants to Purchaser that no copy of the Licensed Software provided to Purchaser contains or will contain any Self-Help Code nor any Unauthorized Code as defined below. The warranty is referred to in this Contract as the "No Surreptitious Code Warranty."
- 26.2. As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other Software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an Owner of the computer program (or other person acting by authority of the Owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.
- 26.3. As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.
- 26.4. Vendor will defend Purchaser against any claim, and indemnify Purchaser against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

27. Compliance with Standards

[Use only if applicable schedule is developed.]

Vendor represents that all Software and elements thereof, including but not limited to, documentation and source code, shall meet and be maintained by Vendor to conform ~~to~~ *[the standards set forth on Schedule ___] - OR - (applicable industry standards.)*

[The following two clauses may optionally be included to require the Vendor to meet minimum standards for quality assurance. One or the other would be used, but not both. In many cases, neither would be used since many companies have attained neither type of certification, however, these clauses should be considered in cases where quality and reliability are exceptionally important. Most companies that are compliant are probably in the tools market. Extra points should be awarded in the solicitation document for meeting these standards.]

The Vendor warrants that it has received certification from an authorized certifying authority that its Software quality assurance practices conform to the requirements of the current version of the ISO-9001

standard "Quality systems - Model for quality assurance in design, development, production, installation and servicing" and that this certification was received within one (1) year of execution of this Contract. Vendor further warrants that it will maintain its quality assurance practices and certification in conformance with the ISO-9001 during the term of this Contract.

OR

The Vendor warrants that its Software development process has been assessed by a certified Software Capability Evaluator, as defined by the Software Engineering Institute, and found to conform to the requirements of a Level 2 development process as defined by the current version of the Capability Maturity Model (CMM), also defined by the Software Engineering Institute. Vendor further warrants that it will maintain or improve its Software development process at Level 2 or above during the term of this Contract.

Compliance with Standards– To cause Vendor to comply with specified Software standards (Purchaser's, American National Standards Institute (ANSI), International Standards Organization (ISO), or other

28. Training

[It is the responsibility of the Purchaser to ensure that any training offered or promised is included in the contract. A sample training section is provided below.]

- 28.1. Vendor shall provide [_____] (____) [calendar days/Business Days] of training, by at least one but not more than [_____] (____) qualified Vendor personnel; in the use of the Licensed Software, to be attended by up to [_____] (____) of Purchaser's employees, agents, or independent contractors, at [_____] or at such other location as the parties may agree.
- 28.2. The starting dates of the training will be as agreed by the parties, but in no case later than [Month Day, Year].
- 28.3. The training fee, whether separately stated under the pricing sections of this Contract or included in the license fee of the Software, shall cover all costs of training. Purchaser shall not be responsible for any additional Vendor costs for training required pursuant to this section.

Training – To establish any provisions and Vendor responsibilities for training on Software.

29. Minority and Women's Business Enterprise (MWBE) Participation

[The following MWBE section is applicable only when MBE or WBE credit was given to Vendor's Response during evaluation of the competitive bid.]

Failure of the Vendor to comply with the established MWBE requirements as set forth in Vendor's Response (Exhibit B) and MWBE Certification (Schedule C) is a material breach of this Contract and may subject the Vendor to penalties and other remedies under Washington State Law.

Compliance with Minority- and Women-Owned Business Requirements – If minority- and/or women-owned business goals are required on the contract, a clause must be included stating that the Vendor will comply with Purchaser requirements to utilize minority- and women-owned businesses in contracting, subcontracting, or joint-venturing. The contract also identifies the name(s) of the firm(s), the type of work that will be performed by minority- and/or women-owned businesses, and its dollar value.

Failure on the part of the Vendor to meet MWBE specifications is a material breach of contract. In accordance with WAC 326-30-080, substitution of a selected MBE or WBE prime or Subcontractor is allowed only when the firm is decertified or indicates it is unable or unwilling to perform the work. The contracting Purchaser approves substitutions and

may require the Vendor to substitute another certified MWBE to meet the contract specification.

30. Protection of Purchaser's Confidential Information

[If Purchaser has a unique category of confidential information, e.g., criminal records, health histories, etc., include those in the list below.]

- 30.1. Vendor acknowledges that some of the material and information which may come into its possession or knowledge in connection with this Contract or its performance, may consist of confidential data, the disclosure of which to, or use by, third parties could be damaging. Therefore, access to information concerning individual recipients of the State's services or individual clients, among other items, shall not be granted except as authorized by law or agency rule. Vendor agrees to hold all such information in strictest confidence, not to make use thereof for other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information, and not to release or disclose it to any other party. Vendor agrees to release such information or material only to Subcontractors who have signed a written agreement expressly prohibiting disclosure. Vendor further agrees to either destroy or return all such information at the end of the term of this Contract.
- 30.2. This section does not impose any obligation on the Vendor if the information is: (1) publicly known at the time of disclosure; (2) already known to the receiving party at the time it is furnished to the Vendor; (3) furnished by the Purchaser to others without restrictions on its use or disclosure; or (4) independently developed by the receiving party without use of the proprietary information.

Safeguarding of Information – The use or disclosure by any party of any information concerning the Purchaser for any purpose not directly connected with the service provided under the contract is prohibited.

Confidentiality – Vendor is required to maintain all information as confidential with regard to study findings and recommendations, the Purchaser's business and financial affairs, and any other proprietary information of the Purchaser.

31. Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Software or Related Services provided pursuant to this Contract is served upon Vendor or Purchaser, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and Purchaser further agree to cooperate with the other party in any lawful effort by the such other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

Contract Termination

32. Termination for Default~~(required term)~~

- 32.1. If either the Purchaser or the Vendor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed. If the failure or violation is not corrected, this Contract may be

terminated immediately by written notice from the aggrieved party to the other party. The option to terminate shall be at the sole discretion of the aggrieved party.

- 32.2. In the event of termination of this Contract by Purchaser, the Purchaser shall have the right to procure the Software or Services that are the subject of this Contract on the open market and the Vendor shall be liable for all damages including, but not limited to: (1) the cost difference between the original Contract price for the Software or Services and the replacement costs of such Software or Services acquired from another Vendor; (2) if applicable, all administrative costs directly related to the replacement of this Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and (3) any other costs to the Purchaser resulting from the Vendor's breach. The Purchaser shall have the right to deduct from any monies due to the Vendor, or that thereafter become due, an amount for damages that the Vendor will owe the Purchaser for the Vendor's default.
- 32.3. If it is determined for any reason the failure to perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be Termination for Convenience
- 32.4. This section shall not apply to any failure(s) to perform that result from the willful or negligent acts or omissions of the aggrieved party.

Termination for Default – The contracting Purchaser will reserve the right to judge the competency of the Vendor at any stage of the contract. This term allows termination of the contract due to documented deficiencies in the Vendor's performance.

33. Termination for Convenience~~(required term)~~

- 33.1. When it is in the best interest of the Purchaser, the Purchaser Contracting Officer may terminate this Contract, in whole or in part, by ~~fourteen (14) calendar days or other appropriate length of time~~ written notice to the Vendor. Invocation of the Termination for Withdrawal of Authority or Termination for Non-Allocation of Funds sections shall be deemed a termination for convenience but will not require such ~~fourteen (14) calendar days or other appropriate length of time~~ notice.
- 33.2. If this Contract is so terminated, the Purchaser is liable only for payments required by the terms of this Contract for Software and Related Services received and Accepted by the Purchaser prior to the effective date of termination.

Termination for Convenience – This term allows the contract to be terminated when it is in the best interest of the Purchaser.

34. Termination for Withdrawal of Authority

In the event that the authority of the Purchaser to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, the Purchaser may terminate this Contract under the Termination for Convenience section. This section shall not be construed so as to permit the Purchaser to terminate this Contract in order to acquire similar Software from a third party.

35. Termination for Non-Allocation of Funds

If funds are not allocated to continue this Contract in any future period, the Purchaser will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then current period. The Purchaser agrees to notify the Vendor of such non-allocation at the earliest possible time. No penalty shall accrue to the Purchaser in the event this section shall be exercised. This section shall not be construed so as to permit

the Purchaser to terminate this Contract in order to acquire similar Software or Services from a third party.

Funding Withdrawn – In the event funding is withdrawn, reduced, or limited after the commencement of the contract but prior to completion, the Purchaser may terminate the contract under the "Termination for Convenience" clause without the required notice. If no periodic future payments are required under the Contract, this clause may be omitted

36. Termination for Conflict of Interest

36.1. The Purchaser may terminate this Contract by written notice to the Vendor if it is found, after due notice and examination, that there is a violation by any of the parties hereto of:

36.1.1. Ethics in Public Service, chapter 42.52 RCW; or

36.1.2. Any other laws regarding ethics in public acquisitions and procurement and performance of contracts.

36.2. In the event this Contract is terminated as provided above pursuant to a violation by the Vendor, the Purchaser shall be entitled to pursue the same remedies against the Vendor as it could pursue in the event of a breach of this Contract by the Vendor.

Conflict of Interest – The Purchaser may, by written notice, terminate the right of the Vendor to proceed if the Purchaser finds that any gratuity, bribe, extra payment in the form of entertainment, gifts or otherwise has been offered or given by the Vendor with the intent of securing the contract or receiving favorable treatment with regard to any aspect of the contract.

37. Termination Procedure

37.1. Upon termination of this Contract, the Purchaser, in addition to any other rights provided in this Contract, may require the Vendor to deliver to the Purchaser any property or Software specifically produced or acquired for the performance of such part of this Contract as has been terminated. The sections for the Treatment of Assets shall apply in such property transfer.

37.2. Unless otherwise provided herein, the Purchaser shall pay to the Vendor the agreed-upon price, if separately stated, for the Software or Services received and Accepted by the Purchaser: PROVIDED THAT, In no event shall the Purchaser pay to the Vendor an amount greater than the Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the Disputes section of this Contract. Purchaser may withhold from any amounts due the Vendor for such completed work or Services such sum as the Purchaser Contract Administrator determines to be necessary to protect the Purchaser from potential loss or liability.

37.3. After receipt of a notice of termination, and except as otherwise directed by the Purchaser, the Vendor shall: *(Delete steps below which are inapplicable to your contractual situation)*

37.3.1. Stop work under this Contract on the date, and to the extent specified, in the notice;

37.3.2. If termination is to the Software license purchase sections of this Contract, then Purchaser shall place no further orders and Vendor shall accept no further orders for additional Software license;

37.3.3. If termination is to the Software license, then except as otherwise agreed to by the parties, Purchaser shall, at its option, surrender to Vendor or destroy and provide Vendor with a certificate signed by the Purchaser Contract Administrator attesting to the

destruction of all copies of the Licensed Software purchased pursuant to this Contract and terminated by this section, remaining in the possession of Purchaser, its employees, or agents;

- 37.3.4. If termination is to the Maintenance and Support sections, Vendor shall complete all maintenance and support requests made prior to the date of notice of termination, notwithstanding the effective date of termination;
 - 37.3.5. As soon as practicable, but in no event longer than thirty (30) calendar days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Purchaser to the extent required, which approval or ratification shall be final for the purpose of this section;
 - 37.3.6. Complete performance of such part of this Contract as shall not have been terminated by the Purchaser;
 - 37.3.7. Take such action as may be necessary, or as the Purchaser may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Vendor and in which the Purchaser has or may acquire an interest;
 - 37.3.8. Transfer title, excluding Licensed Software, to Purchaser and deliver in the manner, at the times, and to the extent directed by the Purchaser Contract Administrator, any property which is required to be furnished to Purchaser; and
 - 37.3.9. Provide written certification to the Purchaser that the Vendor has surrendered to the Purchaser all said property.
- 37.4. The Vendor shall pay within thirty (30) calendar days of notice the damages due Purchaser as the result of termination.

If the Purchaser terminates the contract, the Vendor is required to deliver to the Purchaser any property produced to the point of termination as part of the contract performance. The steps the Vendor must follow once a notice of termination is received are delineated.

38. Covenant Against Contingent Fees

[This section is required to be included only when federal funds are being used for the purchase.]

- 38.1. The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, ~~except~~ bona fide employees or a bona fide established commercial or selling agency of the Vendor.
- 38.2. In the event of breach of this section by the Vendor, the Purchaser shall have the right to either annul this Contract without liability to the Purchaser, or, at the Purchaser's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

Covenant Against Contingent Fees – The Vendor warrants that no person or selling agent has been employed or retained to solicit or secure the contract. A firm cannot hire an individual to use "influence" to obtain a contract.

Disputes and Remedies

39. Disputes *(required term)*

[If this is a simple contract for \$10,000 or less only the following paragraph need be included.]

Both parties agree to exercise good faith in dispute resolution. Further, the Purchaser and the Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract which are not affected by the dispute.

[If this is a complex contract or is for more than \$10,000 use the following paragraphs.]

- 39.1. In the event a bona fide dispute concerning a question of fact arises between the Vendor and the Purchaser and it cannot be resolved between the parties with the aid of the Purchaser Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 39.2. Time is of the essence in resolving disputes. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days.
 - 39.2.1. Then, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved after the three (3) Business Days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member.
 - 39.2.2. Within three (3) Business Days of receipt of the initiating party's request, the responding party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three (3) Business Days.
 - 39.2.3. The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
 - 39.2.4. Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 39.3. Both parties agree to be bound by the determination of the dispute resolution panel *include this section whenever possible so decision will be binding upon parties.]*
- 39.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible *[If previous section on decision of dispute resolution panel being binding is omitted from the contract add: "Unless irreparable harm will result, neither party shall commence litigation against the other before the dispute resolution panel has issued its decision on the matter in dispute."]*
- 39.5. The Purchaser and the Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract which are not affected by the dispute.
- 39.6. If the subject of the dispute is the amount due and payable by Purchaser for maintenance Services being provided by Vendor, Vendor shall continue providing maintenance pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

Disputes – When a bona fide dispute arises between the Purchaser and Vendor, remedy is provided via a disputes hearing. This dispute process will generally precede any court action.

40. Attorneys' Fees and Costs

- 40.1. If any litigation is brought to enforce any term, condition, or section of this Contract, or as a result of this Contract in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred for such litigation, including necessary fees, costs, and expenses for Services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 40.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

Attorneys' Fees and Costs– General clause for payment of attorneys' fees

41. Non-Exclusive Remedies

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

42. Liquidated Damages

[If this section is not used, strike references in other sections, by searching for the terms Liquidated Damages.]

42.1. Liquidated Damages - General

- 42.1.1. Any delay by the Vendor in meeting the ~~delivery date or installation date, maintenance or repair date, whichever is applicable and Standard of Performance and Acceptance date~~ set forth in this Contract will interfere with the proper implementation of the Purchaser's programs to the loss and damage of the Purchaser.
- 42.1.2. As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, the Purchaser and the Vendor, therefore, agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the amount set forth in the following sections and the parties agree that the Vendor shall pay such amounts as liquidated damages and not as a penalty.
- 42.1.3. Liquidated damages provided under the terms of this Contract are subject to the same limitations as provided in the section titled Limitation of Liability

42.2. Liquidated Damages - Specific

- 42.2.1. If Vendor does not have the Software ~~delivered by the Delivery Date or installed by the Installation Date, whichever is applicable~~ agreed upon between the Purchaser and Vendor, then Vendor shall provide a revised ~~Delivery Date or Installation Date, whichever is applicable~~ and pay to the Purchaser as fixed and agreed liquidated damages, in lieu of all other damages due to such delay, for each calendar day between the specified ~~Delivery Date or Installation Date~~ and the date that Vendor actually ~~delivers or installs~~ the Software and Software is operational in accordance with the Standard of Performance and Acceptance an amount of ~~fixed dollar amount per day or~~

percentage of total cost (purchase price plus applicable tax and shipping) of the delinquent Software per day]

- 42.2.2. If the revised *[Delivery Date or Installation Date, whichever is applicable]*s more than *[_____ (___)]*calendar days from the original *[Delivery Date or Installation Date, whichever is applicable]* then by written notice to the Vendor, the Purchaser may immediately terminate the right of Vendor to *deliver or install* the Software and the Purchaser may obtain substitute Software from another Vendor. In this event, the Vendor shall be liable for fixed and agreed liquidated damages, in lieu of all other damages due to such delay, in the amount specified above, until substitute Software is *[delivered or installed]*, or a maximum of *[_____ (___)]*calendar days *[length of time that is appropriate for specific acquisition]* from the original *[Delivery Date or Installation Date]*, whichever occurs first.

[If using a section for a guaranteed response time for maintenance, use the following section.]

- 42.2.3. If Vendor's maintenance personnel fail to arrive at the Purchaser's installation site within *[two (2) hours or whatever was agreed upon]* after notification by the Purchaser that maintenance is required, the Vendor shall pay to the Purchaser as fixed and agreed liquidated damages, in lieu of all other damages due to such non-responsiveness, for each hour between the agreed *[two (2) hours or whatever was agreed upon]* response time and the actual response time an amount of *[\$_____]* dollars *[(\$_____)]* per hour for each "late" hour or part thereof (prorated) beginning with the time of notification by the Purchaser and ending with the time that Vendor's maintenance personnel arrive at the Purchaser's site.

Liquidated Damages– To establish automatic damages because of Vendor performance delays.

43. Failure to Perform

If the Vendor fails to perform any substantial obligation under this Contract, the Purchaser shall give the Vendor written notice of such failure to perform. If after thirty (30) calendar days from the date of the written notice Vendor still has not performed, then the Purchaser may withhold all monies due and payable to Vendor, without penalty to the Purchaser, until such failure to perform is cured or otherwise resolved.

Failure to Perform– To establish that the State may withhold monies, beginning 30 calendar days after written notification that the Vendor has failed to perform any substantial obligation as stipulated in the contract

44. Limitation of Liability*(required term)*

- 44.1. The parties agree that neither the Vendor nor the Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except for a claim or demand based on patent or copyright infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages, retainages, or any other such conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled OSHA/WISHA Termination for Default and Review of Vendor's Records are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 44.2. Neither the Vendor nor the Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Vendor or the Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a

governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Vendor, the Purchaser, or their respective Subcontractors.

- 44.3. If delays are caused by a Subcontractor without its fault or negligence, neither the Vendor nor the Purchaser shall be liable for damages for delays, unless the Software or Services to be furnished by their Subcontractors were obtainable on comparable terms from other sources in sufficient time to permit the Vendor or the Purchaser to meet its required performance schedule.
- 44.4. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Contract Administration

45. Notices

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Software) shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses:

to **Vendor** at: *[Vendor Name]*
 Attention: [Name]
 [Street Address]
 [City]
 [State and Zip]
 [Phone and fax numbers]

to **Purchaser** at: State of Washington
 [Purchaser]
 Attention: [Contract Administrator/Officer, per Purchaser policy]
 [Purchaser Street Address]
 Olympia, WA 98504[XXXX]
 [Phone and fax number]

Notwithstanding RCW 1.12.070, such communications shall be effective upon the earlier of receipt or four (4) calendar days after mailing. The notice address as provided herein may be changed by written notice given as provided above.

Notices – To define official addresses for formal notifications

46. Section Headings, Incorporated Documents, and Order of Precedence

- 46.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- 46.2. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:

- 46.2.1. Applicable federal and state statutes, laws, and regulations;
- 46.2.2. Sections of this Contract[*Contract Number*];
- 46.2.3. Schedule D - Software Specifications, to this Contract;
- 46.2.4. Schedule A - Authorized Product and Price List, to this Contract;
- 46.2.5. Exhibit A - State of Washington,[*Purchaser Name*]Request for [*Proposal/Quotation/Quotation and Qualification*] [(*RFP*)/(*RFQ*)/(*RFQQ*)]for [*Description of Acquisition*]dated [*Date*];
- 46.2.6. Exhibit B - Vendor's Response to the Purchaser, dated[*Date*], including all written information provided with Vendor's response;
- 46.2.7. The terms and conditions contained on Purchaser's purchase documents, if used; and
- 46.2.8. All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, and other written representations the Vendor made available to the Purchaser and used to effect the sale of Software to the Purchaser, or purports the Software is fit for a particular purpose or attests to the Software's engineering level, operating condition, functions, capabilities, or merchantability.

Contract Inconsistency – In the event of inconsistency between contract documents, the order of precedence of the documents should be stated. First, federal and state law prevails, then the contract; then, depending on the circumstances, either the Vendor's proposal, the Request for Proposals, etc.

47. Entire Agreement(*required term*)

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titledVendor Commitments, Warranties, and Representations, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

Entire Agreement– To establish that the contract constitutes the entire agreement and supersedes all previous discussions, bid processes, and agreements, except as provided in Vendor Commitments, Warranties, and Representations. Specific documentation such as Vendor proposals,Software specifications, communications regarding goods and services to be provided, etc. should be included in the contract by reference or attachment, where Vendor assurances and performance questions are concerned

48. Additional Services and Software

[This option is intended to be utilized only for additions which are within the time, cost, and product scope of the original solicitation document; otherwise, a new competitive solicitation must occur.]

Purchaser and Vendor agree that additional Services and/or Software, which are appropriate to the scope of this Contract, may be added to this Contract (Schedule A hereto) by an instrument in writing, with the mutual consent of both parties. Such writing shall include a specific description of the additional Services and/or Software, pricing and additional terms and conditions as relevant. The additional Services and/or Software shall be available under the same terms and conditions established herein, unless otherwise agreed to in a signed writing.

49. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of the Vendor and the Purchaser. Only the Purchaser Contracting Officer or delegate by writing shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Contract on behalf of the Purchaser.

Limitation of Authority – Only the Purchaser's delegate in writing shall have authority to alter or modify any clause or condition of the contract, and any change must be in writing signed by the delegee.

50. Purchaser Contract Administrator

The Purchaser shall appoint *[Name]* who will be the Purchaser Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The Purchaser Contract Administrator will manage this Contract on behalf of the Purchaser and will be the principal point of contact for the Vendor concerning Vendor's performance under this Contract. The Purchaser shall notify Vendor, in writing, when there is a new Purchaser Contract Administrator assigned to this Contract.

Contract Representatives – The contract should identify by name or by position the persons responsible for representing the Purchaser and the Vendor as project managers in matters related to the execution of the contract. These individuals will be accountable for project performance and results.

51. Vendor's Account Manager

The Vendor shall appoint *[Name]* who will be the Account Manager for the Purchaser's account. The Vendor's Account Manager will be the principal point of contact for the Purchaser concerning the Vendor's performance hereunder and for receipt of notices. The Vendor's Account Manager will also serve as the focal point for business matters, support coordination, and administrative activities.

Contract Representatives – The contract should identify by name or by position the persons responsible for representing the Purchaser and the Vendor as project managers in matters related to the execution of the contract. These individuals will be accountable for project performance and results.

52. Independent Status of Vendor

The parties hereto, in the performance of this Contract, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever, nor will the Vendor make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW, chapter 23B.16 RCW, or Title 51 RCW.

Independent Capacity – The contract should state that the Vendor is independent and neither the Vendor nor Vendor's employees are to be considered employees of the state. The state legitimately does not have to pay employee taxes such as workman's compensation, FICA, and unemployment compensation for contractors.

53. Governing Law*(required term)*

This Contract shall be governed in all respects by the law and statutes of the state of Washington. The jurisdiction for any action hereunder shall be the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

Governing Law – The contract shall be governed by the laws of the state of Washington. Since commercial law varies from state to state, it is important to include the governing law, particularly when dealing with out-of-state contractors.

Venue – The venue is the locality in which a trial would occur. Any lawsuit involving the contract would be filed in the county stated in this clause. For agencies in the Olympia area, for example, this is Thurston County.

54. Subcontractors

The Vendor may, with prior written permission from the Purchaser Contract Administrator, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of the Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Vendor to the Purchaser for any breach in the performance of the Vendor's duties. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of the Vendor, and the Vendor further agrees to hold the Purchaser harmless from acts or omissions of the Vendor's Subcontractors, their agents, or employees subject to the limitations set forth in the Limitation of Liability section of this Contract. The Purchaser shall not be liable for any loss or damage resulting from personal injury, physical loss, harassment of employee, or violations of Patent and Copyright Indemnification section of this Contract occasioned by the acts or omissions of the Vendor's Subcontractors, their agents or employees. The Patent and Copyright Indemnification section of this Contract shall apply to all Subcontractors.

Subcontracting – This section is used to define conditions under which the Vendor can subcontract work. Generally, the Vendor's proposal will identify the Subcontractors. When the service of a Subcontractor is required after award, and was not identified in the original contract, the prime Vendor must request advance approval from the Purchaser for use of the selected Subcontractor.

55. Assignment

55.1. With the prior written consent of the Purchaser, which consent shall not be unreasonably withheld, the Vendor may assign this Contract including the proceeds hereof: PROVIDED, That such assignment shall not operate to relieve the Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to the Purchaser that may arise from any breach of the sections of this Contract, its supplements, or warranties made herein including but not limited to, rights of setoff.

55.2. With the prior written consent of the Vendor, which consent shall not be withheld unreasonably, the Purchaser may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the state of Washington: PROVIDED, That such assignment shall not operate to relieve the Purchaser of any of its duties and obligations hereunder.

Assignment-- To establish that neither party shall assign, sublicense nor transfer its rights, duties, or obligations without written consent of the other party. If vendor performance or financial condition is a problem, it may be necessary to keep Vendor assignment at the Purchaser's sole option

56. Publicity (required term)

The Vendor agrees to submit to the Purchaser all advertising, sales promotion, and other publicity matters relating to this Contract or any Product furnished by the Vendor wherein the Purchaser's name is mentioned or language used from which the connection of the Purchaser's name therewith may, in Purchaser's judgment, be inferred or implied. The Vendor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of the Purchaser.

Publicity – To establish that the Vendor will not use any advertising, sales promotion, or any other publicity matters wherein the State's name may be specifically stated, implied, or inferred without the consent of the State

57. Review of Vendor's Records (required term)

- 57.1. The Vendor and its Subcontractors shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract and shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for one (1) year following the termination of litigation, including all appeals if the litigation has not terminated within five (5) years from the date of expiration or termination of this Contract.
- 57.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Purchaser's Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable. During the term of this Contract, access to these items will be provided within Thurston County. During the six (6) year period after this Contract term or five (5) year term following litigation, delivery of and access to these items will be at no cost to the State. The Vendor shall be responsible for any audit exceptions or disallowed costs incurred by the Vendor or any of its Subcontractors.
- 57.3. The records retention and review requirements of this section shall be incorporated by the Vendor in any of its subcontracts.
- 57.4. It is agreed that books, records, documents and other evidence of accounting procedures and practices related to the Vendor's cost structure, to include overhead, general and administrative expenses, and profit factors shall be excluded from the Purchaser's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

Records, Documents and Reports – Vendor shall maintain books, records and documents to reflect all direct and indirect costs expended in the performance of the contract for potential audit of billing statements.

General

58. Patent and Copyright Indemnification (required term)

- 58.1. Vendor will, at its expense, defend or settle any claim against the Purchaser that Software or work products supplied hereunder infringe any patent, copyright, utility model, industrial design, mask work or trademark. Vendor will pay resulting costs, damages and attorneys' fees finally awarded provided that Purchaser:

- 58.1.1. Promptly notifies Vendor in writing of the claim; and

- 58.1.2. Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.
- 58.2. Vendor will pay all costs of such defense and settlement and any costs and damages awarded by a court or incurred by Purchaser, except costs paid to the Office of the Attorney General as legal fees. If such claim has occurred, or in Vendor's opinion is likely to occur, Purchaser agrees to permit Vendor at its option and expense, either to procure for Purchaser the right to continue using the Software or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Software is enjoined by a court and the Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Software and refund its depreciated value. No termination charges will be payable on such returned Software. Depreciated value shall be calculated on the basis of a useful life of five (5) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of 365 days per year. In the event the Software has been installed less than one (1) year, transportation to the initial installation site paid by Purchaser shall be refunded by Vendor.
- 58.3. Vendor has no liability for any claim of infringement arising from:
 - 58.3.1. Vendor's compliance with any designs, specifications or instructions of the Purchaser;
 - 58.3.2. Modification of the Software by Purchaser or a third party without the prior knowledge and approval of Vendor; or
 - 58.3.3. Use of the Software in a way not specified by Vendor;
 - unless the claim arose against Vendor's Software or Services independently of any of these specified actions.

Patent and Copyright Indemnification - To establish responsibility of both parties in event of infringement of a patent, copyright, or other intellectual property right.

59. Save Harmless(*required term*)

Vendor shall protect, indemnify and save the Purchaser harmless from and against any damage, cost, or liability, including reasonable attorneys' fees resulting from such claim, by third parties for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, agents, or Subcontractors.

Save Harmless – This clause protects the state and/or the Vendor from negligence or omission on the part of the other party, per RCW 4.92.270. The Vendor holds the state, Purchaser, and Purchaser employees harmless from claims, suits, or actions arising from the negligence or omission of the Vendor while performing the terms of the contract. Standard indemnification language is provided in the “Contracts and the Indemnification Clause” pamphlet published by the Department of General Administration, Office of Risk Management. You may call (360) 902-7303 to request a copy of the pamphlet or to ask questions about this subject.

60. Insurance

[Insurance is to be required only when necessary for the type of purchase.]

- 60.1. Liability and Auto Insurance. Vendor shall, during the term of this Contract, maintain in full force and effect, the insurance described in this section with an insurance carrier or carriers licensed to conduct business in the state of Washington and approved by the Purchaser Contract Administrator, which approval shall not be unreasonably withheld. The minimum acceptable

limits and types of coverage shall not be less than \$1 million commingled single limit per occurrence for each of the following categories:

- 60.1.1. Public liability covering the risks of bodily injury, property damage and personal injury (including death);
 - 60.1.2. General Business Liability; and
 - 60.1.3. Automobile liability (owned or nonowned) covering the risks of public liability and property damage.
- 60.2. Premiums on all insurance policies shall be paid by Vendor or its Subcontractors. Such insurance policies provided for the Purchaser pursuant to this section shall name the Purchaser as an additional insured and shall have a condition that they cannot be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have first been given to the Purchaser by such insurer.
- 60.3. Vendor shall furnish to the Purchaser copies of certificates of all required insurance within thirty (30) calendar days of the execution date of this Contract.

Businesses which provide services to the state must carry liability insurance to protect the state's interests. Contractual insurance in a commercial general liability policy provides coverage to protect the state from risks assumed by the Vendor, whether oral or written.

Other types of insurance such as employers liability, fidelity, vehicle liability, professional liability or errors and omissions may be included in a purchased service contract based on the scope of work to be performed. For more specific information on insurance requirements, call the Department of General Administration, Division of Risk Management, (360) 902-7303.

61. Industrial Insurance Coverage

Prior to performing work under this Contract, the Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. The Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Vendor, or any Subcontractor or employee of the Vendor, which might arise under the industrial insurance laws during the performance of duties and Services under this Contract.

When a state Purchaser enters into a contract for a purchased service, it must ensure the state's interest if either the Vendor or someone employed by the Vendor is killed or injured while performing work under the contract. The answer to this question is determined by Washington's industrial insurance law, Title 51 RCW.

With few exceptions, Title 51 RCW holds the contracting Purchaser responsible for making sure that such coverage is provided. Exclusions are listed in RCW 51.12.020 and include sole proprietors, partners, corporate officers and others, unless they have selected optional coverage.

To promote compliance with Title 51 RCW and avoid unplanned financial liability for the payment of industrial insurance premiums, agencies should review RCW 51.08.070, RCW 51.08.180 and RCW 51.08.195 and determine whether a potential Vendor meets either the definition of "employer" or that of a "worker." Making this determination may require a complex analysis. To assist in determining whether the determination of "employer" or "worker" is applicable, please call the L&I Field Audit Program in Olympia at (360) 902-4752 or (360) 902-4769.

Agencies can verify a Vendor's compliance with Title 51 RCW by contacting the Vendor Registration Unit of L&I, Telephone: (360) 902-5202 in Olympia. In the event the Vendor is found to be noncompliant, the Purchaser may still enter into the contract but should notify the Vendor that no payments for service provided under the contract will be made until the Vendor furnishes evidence of full compliance. For long-term contracts, the Purchaser should require the Vendor to provide proof of continuous compliance with Title 51 RCW prior to release of final payment under the contract.

62. Licensing Standards

The Vendor shall comply with all applicable local, state, and federal licensing requirements and standards necessary in the performance of this Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

Licensing Standards – The contracting Purchaser must advise the Vendor to register with the Washington State Department of Revenue prior to performing work under the contract. Vendor will be issued a State Uniform Business Identifier (UBI) number to be used in payment of state taxes under the contract. Out-of-state contractors performing work in Washington State are required to have UBI numbers. Vendor agrees to comply with applicable federal, state, county, or municipal standards for licensing and accreditation to assure quality of service.

63. OSHA/WISHA

Vendor represents and warrants that its products, when shipped, are designed and manufactured to meet then current federal and state safety and health regulations. Vendor further agrees to indemnify and hold the Purchaser harmless from all damages assessed against the Purchaser as a result of the failure of the items furnished under this Contract to so comply.

OSHA/WISHA– To establish that the Vendor warrants that its products are designed to meet federal and state safety and health regulations

64. UCC Applicability

- 64.1. Except to the extent the sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the Uniform Commercial Code (UCC) as set forth in Title 62A RCW.
- 64.2. To the extent this Contract entails delivery or performance of Services, such Services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.
- 64.3. Notwithstanding the Section Headings, Incorporated Documents and Order of Precedence section of this Contract, in the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

65. Antitrust Violations

Vendor and Purchaser recognize that in actual economic practice overcharges resulting from antitrust violations are in fact usually borne by the Purchaser. Therefore, the Vendor hereby assigns to the Purchaser any and all claims for such overcharges as to goods and Services purchased in connection with

this Contract, except as to overcharges not passed on to the Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the price under this Contract.

Antitrust Violations-- To establish that the Vendor assigns claims for overcharges resulting from antitrust violations to the State

66. Compliance with Civil Rights Laws*(required term)*

During the performance of this Contract, the Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. 12101 et seq.; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of the Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part under the Termination for Default section of this Contract, and the Vendor may be declared ineligible for further contracts with the Purchaser. The Vendor shall be given a reasonable time in which to cure noncompliance. In addition to the cancellation of this Contract, Vendor may be subject to penalties under federal and state law.

Compliance with Civil Rights Laws- To establish that the Vendor shall not discriminate against any person for reason of age, sex, race, creed, color, or national origin according to Title VII of the Civil Rights Act.) Noncompliance or refusal to comply with the nondiscrimination laws, regulations or policies may result in rescission, cancellation or termination of the contract.

67. Quiet Possession and Usage

Vendor warrants that the Purchaser, upon paying the amounts due hereunder and performing all other covenants, terms, and conditions on its part to be performed hereunder, may and shall peacefully and quietly have, hold, possess, and enjoy the Software for the term provided without suit, molestation, or interruption.

Quiet Possession and Usage- To confirm State's right to peaceful use of the product upon payment of the amounts due as specified in the contract

68. Severability*(required term)*

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Contract are declared severable.

Severability – To establish that if any provision of the contract is determined to be invalid, the other contract provisions are not automatically invalid.

69. Waiver*(required term)*

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.

Waiver – This clause states that a waiver of a term or condition is not to be considered an ongoing waiver of such term or condition, and that term or condition of the contract may be waived only by the written consent of both parties.

70. Treatment of Assets

- 70.1. Title to all property furnished by the Purchaser shall remain in the Purchaser. Title to all property furnished by the Vendor, for which the Vendor is entitled to reimbursement, other than rental payments, under this Contract, shall pass to and vest in the Purchaser pursuant to the section titled Software Ownership. As used in this section Treatment of Assets if the “property” is the Vendor’s proprietary, copyrighted works, only the applicable license, not title, is passed to and vested in the Purchaser.
- 70.2. Any property of the Purchaser furnished to the Vendor shall, unless otherwise provided herein or approved by the Purchaser, be used only for the performance of this Contract.
- 70.3. The Vendor shall be responsible for any loss or damage to property of the Purchaser which results from the negligence of the Vendor or which results from the failure on the part of the Vendor to maintain and administer that property in accordance with sound management practices.
- 70.4. Upon loss, or destruction of, or damage to any Purchaser property, the Vendor shall notify the Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 70.5. The Vendor shall surrender to the Purchaser all property of the Purchaser prior to settlement upon completion, termination, or cancellation of this Contract.
- 70.6. All reference to the Vendor under this section shall also include Vendor’s employees, agents, or Subcontractors.

Treatment of Assets – Title to all property furnished by the Purchaser and/or purchased by the Vendor as a reimbursable item under the contract shall remain with the Purchaser. The Vendor shall be responsible for loss to any such property and shall surrender the property upon completion of the contract.

71. Vendor’s Proprietary Information

Vendor acknowledges that the Purchaser is subject to chapter 42.17 RCW, the Public Disclosure Act and that this Contract shall be a public record as defined in RCW 42.17.250 through 42.17.340. Any specific information that is claimed by the Vendor to be confidential or proprietary, must be clearly identified as such by the Vendor. To the extent consistent with chapter 42.17 RCW, the Purchaser shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view Vendor's proprietary information, the Purchaser will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, the Purchaser will release the requested information on the date specified.

Protection of Proprietary Information- To establish protection of Vendor's rights and interests in technical information, Software products, copyrights, etc {* Proprietary information can be defined as any data, information, and computer programs and usually includes corrections, modifications, revisions, and copies thereof, whether in machine readable or visually readable form, containing information which is the property of and confidential to the Vendor. It is the responsibility of the Vendor to identify such proprietary information}

Contract Execution

72. Authority to Bind

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

73. Counterparts

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

Counterparts: To provide for counterparts or duplicate originals of the contract.

In Witness Whereof the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Signature Blocks– To provide a statement of understanding and agreement followed by signature blocks

Approved

State of Washington,

[Purchaser]

Approved

[Vendor's Name]

Signature

Signature

Print or Type Name

Print or Type Name

Title

Date

Title

Date

The signature block should not appear on a page by itself. A portion of the text of the contract should be included at the top of the page.

Only those persons with authority to bind the parties may sign the contract document. The Purchaser representative who signs a contract must have delegated signature authority. The contract is considered executed when all authorized parties have affixed their signature.

It is good business practice to have the Vendor sign the document first. This ensures that full agreement has been reached by the Vendor with the terms, and the Purchaser can respond with its approval signature.

The contract is executed when it is signed by all authorized parties. Upon execution, signed copies of the contract should be provided to all interested parties including, but not limited to, the Vendor, the project manager, Purchaser contract office, and Purchaser accounting. In most instances, service may begin immediately or may be scheduled for a predetermined date.

Approved as to Form

State of Washington,
Office of the Attorney General

Signature

Print or Type Name

Assistant Attorney General

Title

Date

Each Purchaser is required to have its contract format approved as to form by the Attorney General's Office. Approval as to form by the Office of the Attorney General verifies legality of the contract instrument but does not imply concurrence in or approval of the content. Provided the contract format has been "approved as to form" by the Attorney General's Office, the assistant attorney general is not required to review each Purchaser contract when the approved format is used. Submittal to the assistant attorney general is required when varying from the approved contract format.

In addition to approval for form, it is often advisable to have contracts reviewed by the assistant attorney general for "substance and content." Some agencies submit all contracts to the Attorney General's Office for review of content; others submit only those on which there is a question as to substance or content.

Schedule A

Authorized Product and Price List

Schedule A
Authorized Product and Price List
as of _____ [Date]
for
Contract No. [XXX-XXX-XXX]
with
[Vendor]

Vendors are (Vendor is) authorized to sell **only the products identified in this Schedule A at the prices set forth in this Schedule A** under the above-referenced Contract.

[List information required to be included by the Vendor, e.g., Product Category, Products Name, Product Description, Price, Training fees, Installation fees, Upgrade fees, Maintenance Fees, etc.]

This Schedule may only be modified in writing by the Purchaser Contract Administrator.

Schedule B

ESCROW CONTRACT

This Software License Contract (hereinafter referred to as "Contract") is entered into by and between the state of Washington, acting by and through [Agency Name], an agency of Washington State government (hereinafter referred to as "Purchaser" or "[Agency Name]" or "[Department/Commission/Board]") located at P.O. Box 4[xxxx], Olympia, Washington, 98504[xxxx] and [Vendor's Name], a [corporation, sole proprietorship, partnership or other business form] licensed under UBI number [UBI number] and FEIN [FEIN # or SSN in lieu] to conduct business in the state of Washington (hereinafter referred to as "Vendor"), located at [list Vendor's address here] for the purpose of licensing [list item(s) to be licensed].

This Escrow Contract (hereinafter referred to as "Escrow Contract") is entered into by and between the state of Washington, acting by and through [Agency Name] an agency of Washington State government (hereinafter referred to as Purchaser or "[Agency Name]" or "[Department/Commission/Board]"), located at P.O. Box 4[xxxx], Olympia, Washington, 98504[xxxx] and [Vendor's Name], a [corporation, sole proprietorship, partnership or other business form] (hereinafter referred to as "Vendor"), located at [list Vendor's address here] and [Escrow Agent's Name], a [corporation, sole proprietorship, partnership or other business form] (hereinafter referred to as "Escrow Agent"), organized and existing under the laws of the state of [Agent's State of registration].

WHEREAS, the Vendor and the Purchaser have entered into a Software License Contract No. [XXX-XXX-XXX] to which this Schedule is appended hereto and made a part hereof, pursuant to which the Vendor has licensed to the Purchaser certain computer Software product(s), including updates, improvements, and enhancements thereof from time to time developed by the Vendor, and such additional computer program changes as the Purchaser may order from the Vendor from time to time, all documentation therefor developed by the Vendor (hereinafter collectively referred to as the "Product"); and

WHEREAS, it is the policy of the Vendor not to disclose the Source Code(s) and related documentation (hereinafter collectively referred to as the ("Source Code Escrow Package")) for the Product(s) to its customers except as provided in an applicable Escrow Contract; and

WHEREAS Vendor and the Purchaser agree that upon occurrence of certain events described in Section 3(a) hereof, the Purchaser shall be able to obtain the Source Code Escrow Package and all revisions thereof;

ACCORDINGLY, the Vendor agrees to deliver the Source Code Escrow Package to the Escrow Agent upon the effective date of this Escrow Contract, which shall be as soon as practicable after the execution date of the Software License Contract between Vendor and the Purchaser.

NOW THEREFORE, in consideration of the mutual covenants exchanged herein and for other valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Vendor, the Purchaser and the Escrow Agent hereby act and agree as follows:

1. DEPOSITS

The Escrow Agent, as a safekeeping (escrow) agent, agrees to accept from the Vendor the Source Code Escrow Package. "Source Code Escrow Package" shall mean the following:

- (a) A complete copy in machine-readable form of the Source Code and Executable Code of the Licensed Software;
- (b) A complete copy of any existing Design Documentation and User Documentation;
- (c) Complete instructions for compiling and linking every part of the Source Code into Executable Code for purposes of enabling verification of the completeness of the Source Code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate Executable Code.

The Escrow Agent will issue to the Vendor and Purchaser a receipt for the Source Code Escrow Package upon delivery. The Source Code Escrow Package held by the Escrow Agent shall remain the exclusive property of the Vendor, and the Escrow Agent shall not use the Source Code Escrow Package or disclose the same to any third party except as specifically provided for herein. The Escrow Agent will hold the Source Code Escrow Package in safekeeping at its office listed in Section 9 title ~~Notices~~ below unless and until the Escrow Agent is to deliver the Source Code Escrow Package to Vendor or the Purchaser, in which case, the Escrow Agent shall deliver the Source Code Escrow Package to the party identified therein, subject, however, to the sections of this Escrow Contract.

2. REPRESENTATIONS OF VENDOR TO PURCHASER

Vendor represents and warrants to Purchaser that:

- a. The materials described in this Contract as Software applications products hereto constitutes the Source Code Escrow Package and documentation for the Product licensed to the Purchaser pursuant to the Software license and service Contract therein.
- b. The Source Code Escrow Package delivered to the Escrow Agent are in a form ~~stable~~ for reproduction by computer and photocopy equipment, and consists of full source language statement of the computer program or programs comprising the Software and complete computer program maintenance documentation, including all flow charts, schematics and annotations which comprise the precoding detailed design specifications, and all other material necessary to allow a reasonably skilled third party programmer or analyst to maintain or enhance the Product without the help of any other person or reference to any other material; such Source Code Escrow Package to be in the mode machine readable by the then operating Purchaser equipment and produced and copied on 1600 bpi magnetic tape.
- c. The Vendor will promptly supplement the Source Code delivered hereunder with all revisions, corrections, enhancements or other changes so that the Source Code Escrow Package constitutes a human readable computer program for the current release of the Product. This supplementation shall be made in machine readable format by the then operating Purchaser equipment and produced and copied on 1600 bpi magnetic tape, along with specifications of sections a. and b. herein, every six (6) months or within ten (10) Business Days of delivery of any modification, enhancement, or upgrade to the Purchaser or any other customer of the Vendor, whichever occurs first.

3. NOTICE OF DEFAULT

- a. The Vendor shall be deemed to be in default of its responsibilities to the Purchaser if:
 - i. The Vendor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign;

- ii. the Vendor has wound up or liquidated its business voluntarily or otherwise and the Purchaser has compelling reasons to believe that such events will cause the Vendor to fail to meet its warranties and maintenance obligations in the foreseeable future; or
- iii. The Vendor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its warranties and maintenance obligations.

The Purchaser shall give written notice ("Notice of Default") to the Escrow Agent of any default by the Vendor. The Notice of Default shall, at the minimum:

- i. Be labeled "Notice of Default";
 - ii. Identify the Software License Contracts and any other relevant agreement, contained therein and this Escrow Contract;
 - iii. Specify the nature of the default(s);
 - iv. Identify the Source Code Escrow Package with specificity; and
 - v. Demand the delivery of the Source Code Escrow Package to the Purchaser.
- b. Upon receipt of the Notice of Default, the Escrow Agent shall send a copy thereof to the Vendor by certified or registered mail, postage prepaid, return receipt requested. The Escrow Agent shall automatically be authorized and directed to deliver the Source Code Escrow Package to the Purchaser in accordance with this Escrow Contract within ten (10) Business Days.

4. NOTICE OF TERMINATION

Upon the termination of the applicable Software License Contracts, the Vendor may obtain the return of the applicable Source Code Escrow Package to terminated Software applications products by furnishing written notice of the termination, agreed to by authorized and notarized signature of the Purchaser.

5. DISPUTES

The Escrow Agent shall not release the Source Code Escrow Package to either party except in accordance with the completion of any of the sections in Section 3 above, or upon receipt of an agreement with authorized and notarized signatures of both Vendor and the Purchaser, authorizing the release of the Source Code Escrow Package to one of the parties hereto.

6. PAYMENT OF ESCROW

As payment for its Services hereunder, the Escrow Agent shall receive a fee of _____ from the Vendor.

7. TERMINATION

Unless terminated sooner, this Escrow Contract shall terminate on the delivery of the Source Code Escrow Package of Software applications products to Vendor or Purchaser as provided herein.

8. WAIVER, AMENDMENT OR MODIFICATION; SEVERABILITY

This Escrow Contract shall not be waived, amended, or modified except by the written agreement of all the parties hereto. Any invalidity, in whole or in part, of any section of this Escrow Contract shall not affect the validity of any other of its sections.

9. NOTICES

All notices required to be given hereunder shall be in writing and shall be given by certified or registered mail, return receipt requested, to the parties at their respective addresses as follows:

to **Vendor** at: *[Vendor Name]*
 Attention: *[Name]*
 [Street Address]
 [City]
 [State]
 [phone and fax numbers]

to **Purchaser** at: State of Washington
 [Purchaser]
 Attention: *[Contract Administrator/Officer, per Purchaser policy]*
 [Purchaser Address]
 Olympia, WA 98504*[XXXX]*
 [phone and fax numbers]

to **Escrow Agent** at: *[Escrow Agent's Name]*
 Attention: *[Name]*
 [Street Address]
 [City]
 [State]
 [phone and fax numbers]

10. LIMITATION ON ESCROW AGENT'S RESPONSIBILITY AND LIABILITY

- a. The Escrow Agent shall not be obligated or required to examine or inspect the Source Code Escrow Package, or any of the Additions. The Escrow Agent's obligation for safekeeping shall be limited to providing the same degree of care for the Source Code Escrow Package as it maintains for its valuable documents and those of its customers lodged in the same location with appropriate atmospheric or other safeguards. However, the parties agree and acknowledge that the Escrow Agent shall not be responsible for any loss or damage to any of the Source Code Escrow Package due to changes in such atmospheric conditions, unless such changes are proximately caused by the gross negligence or malfeasance of the Escrow Agent.
- b. The Escrow Agent shall be protected in acting upon any written notice, request, waiver, consent, receipt or other paper or document furnished to it, not only in assuming its due execution but also the validity and effectiveness of its information therein contained, which it in good faith believes to be genuine and what it purports to be.
- c. In no event shall the Escrow Agent be liable for any act or failure to act under the sections of the Escrow Contract except where its acts are the result of gross negligence or malfeasance. The Escrow Agent shall have no duties except those which are expressly set forth herein, and it shall not be bound by any notice of a claim, or demand, termination or rescission of the Escrow Contract, unless received in writing , and, if its duties herein are affected, unless it shall have given its prior written consent thereto.
- d. The parties to this Contract hereby jointly and severally indemnify the Escrow Agent against any loss, liability or damage (other than any caused by the gross negligence or malfeasance of the Escrow Agent), including reasonable costs of litigation and counsel fees, arising from and in connection with the performance of its duties under this Contract.

11. GOVERNING LAWS

This Contract shall be governed in all respects by the law and statutes of the state of Washington. The venue of any action hereunder shall in the Superior Court for Thurston County, Washington.

12. AUTHORITY TO BIND

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Contract to be duly executed in triplicate originals and each triplicate shall be deemed an original copy of this Contract signed by each party, for all purposes, as of the year and date last written below.

[Purchaser Name]

[Vendor's Name]

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

ESCROW AGENT

By: _____

Its: _____

Date: _____

Schedule C

MWBE Certification

Schedule D

Installation Specifications

Site and Installation Planning- To establish responsibility for site specifications and preparation